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1951.

File No. O. Evacuees 51

Legal Department

A **BRANCH**

Subject:—

Opinions under the Evacuees [Administration of Property] Act, 1949.

P-12

File No. O. Evacuees /51

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C O N T E N T S.

Legal Department File No. O. Evacuees/51

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Legal Department.

The proposal of the Additional Custodian at page 16 ante would be in order provided the sale deed passed in favour of the evacuee purchaser for Rs. 300 was not registered; but the papers only disclose that the agreement under which the vendor has been allowed to continue in possession is unregistered and nothing as to whether the sale deed also was not registered. This should be verified before the notification is cancelled.

Sd/-P.H.Lad

O.C. Additional Secretary to Government.

U.R. to C.P.P., No. 9693, dated the 20th June 1951.

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The view taken by the Chief Secretary is correct. Mere taking service on a contract basis with the State Bank of Pakis-tan cannot be treated as acting in a manner prejudicial to the spirit of the evacuee property law since the object of the Act is first to provide for proper administration of the property of the evacuees who have left India and secondly to prevent any economic drain from India by removing the proceeds of disposal of the property or other moveable property to Pakistan by evacuees Shri Dalal does not appear to have been guilty of any such act to invite the application of the Bombay Evacuee (Administration of Property) Act, 1949. Besides, the definition of "evacuee" in section 2(b) of that Act clearly contemplates that the person to fall within the definition of evacuee must be one who on account of civil disturbances or the fear of such disturbances or the Position of the country must have left India. Shri Dalal does not appear to have left India on any of these grounds though his sentiment towards India as seen from his intercepted letter are far from loyal. Consequently it is doubtful whether Shri Dalal can be calld an evacuee at all. In the circumstances, it appears desirable that the notification issued should be cancelled. If it be so done, the civil proceedings pending in the court on the application made by Shri Dalal would be dropped.

It is regretted that there has been a delay in the return of these papers. These papers were mislad with Shri Lad and could not be traced owing to his illness.

Sd/-J.N.Dhurandhar.
6-8

O.C. Remembrancer of Legal Affairs.

U.R. to R.H.D.No. 779-Confl., dated the 7th August 1951.

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Administration of Evacuee Property Act. 1950.

Even assuming that the Administration of Evacuee Property Act. 1950 applies to the Government property in possession of an evacuee, it appears that the tenancy right of an evacuee contemplated by the Act as property relates to statutory tenancy or tenancy for a fixed period (See section 18 of the Act). The tenancy in the present case is a monthly tenancy liable to be terminated by a month's notice. Consequently the tenancy may be terminated and the Custodian requested to surrender possession of the premises to Government. The view taken by Secretary, Labour and Housing Department is correct.

Sd/-P.M.Lad

for
O.C. / Remembrancer of Legal Affairs.

U.R. to L.& H.D.No. 13326 . dated the 20th August 1951.

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By Government Resolution, Political and Services Department No. 2950/46-II, dated the 16th February 1949, Government had sanctioned a grant of an allowance of Rs. 300/- per month to inter alia Lt. Col. Al Haj Nawabzada Ahmedkhan Sahib, the uncle of the Ruler of Sachin. The allowance is payable during the life time of the grantee. He has now settled in Karachi and has requested for the payment of the allowance at Karachi. The question raised for the consideration of the R.L.A. is whether the allowance in question can be notified as evacuee property.

Attention is invited to R.L.A's opinion No. 9 Confl. dated 5th January 1950 in which the R.L.A. had expressed the view that a similar allowance granted to Nawabzadi Ajmat Dulhan Begum was "property" within the meaning of clause (i) of section 2 of the Administration of Evacuee property Ordinance, 1949; and that it would be "again evacuee property". But that does not mean that Government is bound to pay the allowance to the Custodian. The ex allowance is of a political nature and its continuance will be at the pleasure of Government. There is nothing in the merger agreement of the State which compels its continuance. It appears that it is the general policy of Government to discontinue such allowances if the grantees migrate to Pakistan. The allowances be ng of the nature of political pensions it would be open to Government nt to stop payment thereof any time (see 37 B.L.R. 763 at page 770). In that case the question whether the allowance can be notified as evacuee property would not really survive.

Sd/-J.R.Dhuramdhar.
30-8

O.C. Remembrancer of Legal Affairs.
Sd/-R.T.Katarki
31-8
U.O. to P.& S.D.No. 14011, datedthe 31st August 1951.

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Legal Department.

The questions raised for the H.LA's consideration are:

(1) Whether it is competent for the Additional Custodian of Evacuee Property to dispose of any appeals made over to him by the Custodian though such appeals arise from any area in the State outside the City of Bombay and Bombay Suburban District; and

(2) Whether the Additional Custodian can exercise the powers of review and revision conferred on him by section 26 of the Administration of Evacuee Property Act, 1950, in respect of matters arising outside the Bombay City and Bombay Suburban District.

2. In exercise of powers conferred by sub-section (3) of section 6 of the Administration of Evacuee Property Ordinance, 1949, Government of Bombay, by Order, Rehabilitation Department No. R-141-B dated 9th December 1949 directed that subject to the provisions of sub-sections (2) and (3) of section 6 of the a said Ordinance the Additional Custodian of ~~Evacuee~~ Evacuee Property shall ~~with~~ discharge the duties ~~impos~~ imposed on him by or under the said order within ~~k~~ the area comprised in the City of Bombay and Bombay Suburban District. That Order, after the repeal of that Ordinance is saved by section 58 of the Administration of Evacuee Property Act, 1950. Section 24, sub-section (2) of that Act provides that the Custodian to whom an appeal is preferred under sub-section (1) may dispose of it ~~m~~ himself or make it over to the Additional Custodian or to the Deputy Custodian who is authorised by the Custodian in writing in this behalf (in this Chapter referred to as the authorised Deputy Custodian) Although by the order No. R-141-B dated 9th December1949, the jurisdiction of the Additional Custodian of Evacuee Property is limited to the City of Bombay and Bombay Suburban District, it would be competent for the Custodian to make over under section 24, sub-section(2) , the appeals to the Additional Custodian for disposal even though

such appeals may relate to an area outside the jurisdiction of the Additional Custodian. Besides the order No. R-141-B dated 9th December 1949 also expressly provides that the Additional Custodian shall dispose of such appeals as may be made over to him by the Custodian from any area in the Province excluding the City of Bombay and the Bombay Suburban District. Thus his statutory power to hear any appeals transferred to him by the Custodian has not been curtailed by the Government Order of 9-12-1949 made under section 6(3) of the Ordinance except in regard to appeal arising in the City of Bombay and the Bombay Su Suburban District. Consequently, the reply to the first ~~xxx~~ question is in the affirmative.

3. Sub-section (1) of section 26 of the Administration of Evacuee Property Act, 1950, provides that the Custodian, Additional Custodian or Authorised ~~Exptx~~ Deputy Custodian may at any time, either of his own initiative or on the application made to him in this behalf a call for the record of any proceedings under this Act which is pending before or has been disposed of by , an officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of any orders passed in the said proceedings, and may pass such order in relation thereto as he thinks fit. The power of revision is usually exercisable only in respect of inferior Courts or officers within the limits of one's own jurisdiction (See section 435 Criminal Procedure Code). It, therefore, follows that the words 'an officer subordinate to him' in section 26(1) must be construed as an officer subordinate to the Additional Custodian within the limits of his jurisdiction. The jurisdiction of the Additional Custodian

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has by Government Order dated 9-12-1949 been limited to the area comprised in the City of Bombay and the Bombay Suburban District. It will, therefore, not be competent for the Additional Custodian to exercise powers of revision under section 26(1) over subordinate officers working outside the City of Bombay and the officer Bombay Suburban District. Nor is there a provision in section 26, similar to sub-section (2) of section 24, authorising the Custodian to make over to the Additional Custodian cases for review or revision. The question further arises that even in the area of the City of Bombay and the Bombay Suburban District who can be regarded as officers subordinate to the Additional Custodian over whom he can exercise revisional--Custodian-over-whom-he--can-exercise-revisional jurisdiction. The 'officer subordinate' has not been defined in the Act. Having regard to the scheme of the Act it will not be unreasonable to hold that the expression 'officer subordinate' can be taken to mean an officer within his jurisdiction from whom the Additional Custodian can hear appeals under section 24. Under section 24 the Additional Custodian can hear appeals from the Deputy or Assistant Custodians which have been made over to him by the Custodian. The Additional Custodian, therefore, can only exercise under section 26(1) the powers of review of revision over the Deputy or Assistant Custodians (excluding authorised Deputy Custodians) for the area of the City of Bombay and as the Bombay Suburban District. It is true that under section 24(1)(a) the appellate authority over Deputy or Assistant Custodians is the Custodian, and the Additional Custodian can only hear such appeals from the orders of the Assistant and or Deputy Custodians as are made over to him under

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sub-section (2) by the Custodian. It might conceivably becontended that the Deputy or Assistant Custodians are not officers subordinate to the Additional Custodian for he is not declared under section 24(1)(a) as the appellate authority from their orders. However, such a contention would not be correct in view of the express provision of section 26, which in terms, confers the powers of xx review or revision on the Additional Custodian.

4. In this connection it may also be observed that the words 'officer subordinate' xxx in section 26(1) would not mean officers administratively subordinate to the Additional Custodian or who are declared by the State Government to be under the general supervision and control of the Additional Custodian as seems to be the view of the Additional Custodian at 'A' of his note on page 21. If it is the intention of the Government xx to xx give the Additional Custodian revisional jurisdiction over the sub-ordinate officers outside the area of the City of Bombay and the Bombay Suburban District it can only be done by delegation by the Custodian of these powers under sub-section (4) of section 5 of the Act.

Sd/-P.M.Lad

O.C. Additional Secretary to Government.

U.R. to R.H.D.No. 14279-Confl. dated the 7th September 1951.

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LEGAL DEPARTMENT.

The leases granted prior to 14th August 1947 cannot be cancelled under section 12 of the Administration of Evacuee Property Act, 1950; nor can the lessees of such leases be called upon to surrender possession under section 8(4). These leases are saved (see Nayak v. Bejan Dadiba Bharucha 53 Bom. L.R. 654). Consequently if the lessees of such leases fail to pay rent, the only course open to the administrator would be to evict them through court.

Sd/-P.M.LAD

O.C. Additional Secretary to Government.

U.O. to C. of E.P..No. 17936, dated the 7th November 1951.

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It appears that one Shrimati Hanifbai Abbaker Memon of Tharad sold her house situated in Tharad to one one Shri Vohra Chhotalal Lallubhai for Rs. 16.000 on 21st November 1949 and the deed was presented for registration to the sub-Registrar, Tharad. The Sub-Registrar registered it on the same day and instead of returning it to the party concerned after registration, he retained it with him and referred the matter to the office of the Collector and Deputy Custodian of Evacuee Property, Banas Kantha, inquiring as to what should be done in the matter in view of section 39 of the Administration of Evacuee Property Ordinance No. XXVII of 1949. On the instructions issued by the Collector and Deputy Custodian of Evacuee Property, the purchaser Shri Vohra Chhotalal xxxx applied for a certificate under section 39 of that Ordinance but h the application and the Mamlatdar's report thereon are not traceable in the Deputy Custodian's office. Thereafter no action was taken. In the meantime the Ordinance was replaced by the Administration of Evacuee Property Act, 1950, which contains no provision similar to section 39 of the Ordinance. In view of this position, R.L.A. is requested to advise whether the document is valid.

Section 39(1) of the Administration of Evacuee Property Ordinance, 1949 , provided:

> "Where any document required to be registered under the Indian Registration Act, 1908, purports to transfer any right or interest in any property in contravention of the prop provisions contained in section 20 or section 38, no registering officer shall register any such document and no revenue officer shall sanction any mutation of names in respect thereof, unless the party presenting the document for registration produces a certificate from the custodian declaring that the property is not property belonging to an intending evacuee or that it is not evacuee property or that the transaction has been confirmed or that the Custodian has given his previous approval to the transfer."

It is clear from this provision that a certificate can be insisted upon by the registering officer only when the document required to be registered under the Indian Registration Act purports to trans-

Registration Act purports to transfer any right or interest in any property in contravention of the provisions contained in section 20 or section 38. Section 20 prohibits a person who has been declared an intending evacuee from transfering his immoveable property or any right or interest therein and section 38 prohibits transfer of property by an evacuee or by or on behalf of a person who has become an evacuee after the date of the transfer. In the present case the vendor Shrimati Hasifbai was not declared an intending evacuee under section 19 nor was she has not also become an evacuee thereafter. Consequently, the document did not purport to transfer any right or interest in any property in contravention of the provisions contained in section 20 or section 38. It would, therefore, follow that a certificate from the Custodian was not necessary for registering the document under section 39. The document is, therefore, valid.

Sd/-J.R.Dharamdhar,
12-12

C.C. Remembrancer of Legal Affairs.

U.R. to Custodian of Evacuee Property, No. 19952, dated the 13th December 1951.

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